UNITED
NATIONS

CCPR

International Covenant
on Civil and
Political Rights

Distr.
GENERAL

CCPR/C/SR.1226
12 May 1993

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Forty-seventh session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1226TH MEETING

Held at Headquarters, New York,
on Monday, 5 April 1993, at 10 a.m.

Chairman: Mr. ANDO

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The meeting was called to order at 10.25 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Draft general comment on article 18 of the Covenant (continued)

Paragraphs 9 and 10

1. Mr. DIMITRIJEVIĆ read out the revised version of paragraph 9 of the draft general comment on article 18 as follows:

"Article 18 (3) permits restrictions on the freedom to manifest religion or belief only if limitations are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights of others. The freedom from coercion to have or adopt a religion or belief and the liberty of the parents and guardians to ensure religious and moral education cannot be restricted. In interpreting the scope of the permissible limitation clauses, States parties should proceed from the need to protect the fundamental rights guaranteed under the Covenant including the right to equality and non-discrimination on all grounds specified in articles 2, 3 and 26. In imposing a restriction on manifestations of religion or belief, authorities should use the least restrictive means. Limitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in article 18. The Committee observes that paragraph 3 of article 18 is to be strictly interpreted: restrictions are not allowed on grounds not specified t[herein] [but authorized in regard to other rights protected in the Covenant], such as national security. Limitations should be applied only for those purposes for which they were prescribed and should be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner. The Committee believes that limitations on the freedom to manifest a religion or belief for the purpose of protecting morals should not rely exclusively on criteria based on a single religion or belief. States parties' reports should provide information on the full scope and effects of limitations under article 18 (3), both as a matter of law and their application in specific circumstances".

2. Mr. LALLAH read out the following alternative text for the penultimate sentence of paragraph 9:

> "The Committee observes that morality is a secular concept deriving from many social, philosophical and religious traditions. Consequently, limitations on the freedom to manifest a religion or belief for the purpose of protecting morality must be based on the special character of morality as not deriving exclusively from a single tradition or belief".

3. Mr. HERNDL said that the formulation "authorities should use the least restrictive means" at the end of the fourth sentence was too weak; he would prefer stronger language. On the issue of protection of morals, he preferred the formulation suggested by Mr. Dimitrijević to the one proposed by Mr. Lallah.

4. Mrs. HIGGINS favoured retaining the idea contained in square brackets, but rewording the phrase to read "even if they would be allowed as restrictions to other rights protected in the Covenant". She favoured the alternative text proposed by Mr. Lallah for the penultimate sentence, but did not like the term "secular". She therefore suggested that the first sentence should be replaced by the following: "The Committee observes that the concept of morals derives from many social, philosophical and religious traditions."

5. Mr. WENNERGREN suggested that the first sentence of paragraph 9 should end with the word "belief", and that the beginning of the second sentence should be reworded to read: "Only such limitations are permitted that are prescribed by law and are necessary ...". The seventh sentence, which dealt with the State party as a legislator, should be redrafted to correspond better with the last sentence.

6. Mr. SADI endorsed the text proposed by Mr. Lallah and said that he shared Mrs. Higgins' reservations regarding the use of the term "secular". From his reading of history, however, morality was derived basically from religion, and that fact should be reflected in the word order.

7. Mr. EL-SHAFEI supported the text proposed by Mr. Lallah, taking the suggestions made by Mrs. Higgins and Mr. Sadi into account.

8. Mrs. EVATT welcomed the new draft, but wished to record her views on the draft general comment as a whole, since she had joined the process at its later stages.

9. The Covenant drew a fine legal distinction between belief and its manifestation. That distinction was not meaningful in the context of some religions, however, where belief and practice could not readily be separated. If the State sought to limit the manifestation of religion in such instances, it could be seen as limiting, perhaps even threatening, the freedom of belief itself. The consequences for the interpretation of article 18 would be strong resistance by religious organizations to any restriction on manifestation that was seen to challenge belief. The Committee should make it clear that the manifestation of religious freedom could - and perhaps should - be limited, in order to protect equality. In many situations, the equal rights of men and women were seen as inconsistent with religious belief. A manifestation of religious belief that denied such rights, whether in the family or in public life, not only might be limited under article 18, paragraph 3, but probably should be so limited if the State party was to fulfil its obligations under the Covenant. In reality, however, a State was more likely to give privilege to a dominant religion than to those rights. For example, many States had made reservations to the Convention on the Elimination of All Forms of Discrimination against Women based on the ground that equal rights of men and women were inconsistent with religious laws. Therefore, greater emphasis was needed to make clear that limitation of religious manifestation might be necessary to protect those rights.

10. States were often asked to exempt religious groups from the application of general laws on the grounds that they imposed unnecessary or unreasonable limitations on religious manifestation or unduly limited freedom of conscience.

(Mrs. Evatt)

There were many examples of regulatory provisions, from those governing the slaughter of animals up to the question of equal opportunity and anti-discrimination, where exemptions had been granted in some situations. The draft general comment did not provide guidance on an approach to that issue, however. A distinction must be made between regulatory laws, where some flexibility was possible, and areas where fundamental rights and freedoms were at issue and exceptions should not be made.

11. Mr. MAVROMMATIS said that the phrase in square brackets in the sixth sentence should be retained only if it was amended along the lines suggested by Mrs. Higgins. He favoured the text proposed by Mr. Lallah, but would include a reference to the secular, since using exclusively religious criteria would render the grounds for restriction unfair.

12. Mrs. CHANET, after drawing attention to an omission in the first sentence, said that she would prefer to delete the phrase in square brackets. While favouring the text proposed by Mr. Lallah, she would be unable to approve it until the French version was produced. "Morals" and "morality" were two entirely different concepts, and she requested clarification on the meaning of the term was intended to convey.

13. Mr. PRADO VALLEJO said that he favoured the text proposed by Mr. Lallah as amended by Mrs. Higgins.

14. Mr. LALLAH agreed with Mrs. Chanet that the term "morality" did not convey the proper meaning; it should be replaced by "morals". He welcomed Mr. Herndl's suggestion that the phrase "the special character of morality" in the second sentence should be replaced by the word "principles". In response to Mr. Sadi, he had used the term "philosophy" because many religions, particularly non-theistic religions, were described as such. Therefore, he would prefer to use the wording "religious, philosophical and social traditions".

15. He agreed with Mrs. Evatt that the draft had not addressed the regulatory functions of the State. That would be difficult, however, until the Committee had gained greater practical experience in that area through reports from States parties and communications. As to her concerns about equality and non-discrimination, rights were enjoyed not through their limitation but as substantive rights. The third and eighth sentences of the draft paragraph brought in the fundamental principles of equality and non-discrimination.

16. Mr. POCAR said that he was not altogether happy with Mr. Wennergren's suggestion to break the first sentence into two, since that would appear to stress that limitations were permitted, something the Committee particularly wished to avoid. He suggested that the word "fundamental" in the second sentence could be deleted. The inference, otherwise, would be that there were two kinds of rights under the Covenant: fundamental and not fundamental. He agreed with the wording suggested by Mr. Lallah, and suggested that the words "or belief" should be deleted from the end of the text proposed by him.

17. Mr. DIMITRIJEVIĆ, summarizing the discussion thus far, said that dividing the first sentence would give the paragraph a categorical force that was not

(Mr. Dimitrijević)

intended. If the sentence was read in a systematic manner, together with those that followed, the sense of the paragraph was clear. The word "fundamental", in the third sentence, should be deleted, as should the entire fourth sentence. As for the sixth sentence, the idea contained in the bracketed passage should be retained, but reworded on the lines suggested by Mrs. Higgins. In the next sentence, "should" was to be replaced by "may" in the first clause, and by "must" in the second. In the ninth sentence, the Committee had shown a preference for the version proposed by Mr. Lallah, but with the amendment of "morality" to "the concept of morals" and the corresponding rephrasing of the sentence. The final sentence could be left as it stood.

18. Mr. NDIAYE asked whether the concept of morals referred to a universal system of morals, to which everyone could adhere, or to a system of morals specially put together for a particular society. That concept of morals applied in his country, Senegal. He wondered, however, what the case would be in a State with a single religion, such as Islam: on what basis would the concept of morals be defined?

19. Mr. LALLAH said that the sentence had been drafted in response to objections to the effect that the concept of morals should not be based on religion. As other members had pointed out, the concept of morals was specifically secular, yet there was also a need to take into account divergencies in different States.

20. Mrs. HIGGINS said that she viewed the issue slightly differently and that the Committee should avoid stating that morality was a secular concept, in order to accommodate a diversity of views. In response to Mr. Ndiaye, she said that the Committee wished to state that a limitation which would impact differently on people of different religious persuasions should not be based exclusively on a single religion.

21. The CHAIRMAN proposed that the fourth sentence should be deleted and that the sixth sentence should be reworded to read: "The Committee observes that paragraph 3 of article 18 is to be strictly interpreted: restrictions are not allowed on grounds not specified there even if they would be allowed as restrictions to other rights provided in the Covenant, such as national security." The penultimate sentence would be replaced by the text suggested by Mr. Lallah, amended to read as follows: "The Committee observes that the concept of morals derives from many social, philosophical and religious traditions. Consequently, limitations on the freedom to manifest a religion or a belief for the purpose of protecting morality must be based on principles not deriving exclusively from a single tradition".

22. It was so decided.

23. Mr. DIMITRIJEVIĆ suggested, in the interests of avoiding a lengthy debate, that paragraph 10 should be deleted save for the last sentence, which could be appended to paragraph 9.

24. Mrs. HIGGINS agreed with that suggestion but said that the wording of the last sentence should be improved.

25. Mr. DIMITRIJEVIĆ proposed that the sentence should be amended to read as follows: "Persons already subject to certain legitimate constraints, such as prisoners, continue to enjoy their right to manifest religion or belief to the fullest extent compatible with the specific nature of the constraint".

26. It was so decided.

27. Paragraph 9, as amended, was adopted and paragraph 10 was deleted.

Paragraphs 11 to 13

28. Mr. DIMITRIJEVIĆ, turning to the last three bracketed paragraphs of the original draft, said that the Committee must decide at the outset if the central issues they dealt with, namely state religion (para. 11), state ideology (para. 12) and conscientious objection (para. 13) should be addressed at all. If paragraphs 11 and 12 were retained, it might be advisable to add an introductory phrase such as "In those States in which they exist", so as not to seem to encourage the adoption of a state religion or ideology.

29. Mrs. HIGGINS observed that the substance of the Committee's attitude towards state religion - that it was acceptable provided there was freedom for dissenters - had been expressed in earlier paragraphs of the draft comment, so that paragraph 11 was not needed.

30. Mr. POCAR observed that the first part of paragraph 11 dealt with state religion but that the second part dealt with the Committee's wish to be informed of measures that did not refer only to state religion. If paragraph 11 was deleted, the second element might be shifted to an earlier paragraph, such as paragraph 2.

31. Mr. EL-SHAFEI said that paragraph 11 was useful, if only to round out the earlier reference in former paragraph 8 to an aspect of state religion. The treatment of minority religions always came up as a question put to States parties during the consideration of reports.

32. Mr. LALLAH said that he thought paragraph 11 should be retained.

33. Mr. DIMITRIJEVIĆ said that there was merit in retaining all but the first sentence of the paragraph; it had been established elsewhere that a state religion did not of itself contravene either the freedom of religion or the prohibition of discrimination on the basis of religion or belief. The remainder of the paragraph, however, was useful with regard not only to the reporting duties of States but as a statement on the treatment of minority religions in a situation where there was a majority religion.

34. Mrs. EVATT agreed that paragraph 11 was useful as a general statement on a situation where there was a dominant religion.

35. Mr. POCAR said that he agreed with Mr. Dimitrijević that the point at issue was not state religion but dominant religions, which included state religions.

36. Mr. SADI, supported by Mr. PRADO VALLEJO, said that he saw a big difference between dominant religion and state religion, and that the two did not necessarily overlap. Both needed to be addressed.

37. Mrs. HIGGINS said that the issue needed more thought. In the United Kingdom, for instance, there was an established religion that was not remotely dominant in any practical sense.

38. Referring to paragraph 12 on state ideology, she said that it seemed unnecessary. Mr. EL-SHAFEI, Mr. LALLAH and Mrs. EVATT agreed with Mrs. Higgins regarding paragraph 12.

39. Mr. NDIAYE said that he did not think it wise to delete paragraph 12. There were many problems emerging on the international scene that were attributable to state ideologies, and he believed the Committee should take a position on the issue at an early stage.

40. Mr. ANDO, speaking in his personal capacity, said that further thought could be given to retention of article 12.

41. Mr. DIMITRIJEVIĆ observed that to retain the article would be in keeping with the Committee's wish to deal with more than strictly religious issues. The first sentence might be rephrased as a reference simply to the reality of state ideology, rather than as a seeming endorsement of its acceptability.

42. Mrs. HIGGINS, referring to paragraph 13, said that the Committee should definitely deal with conscientious objection, an issue that was the subject of numerous communications under the Optional Protocol and from non-governmental organizations. It would, however, be useful if the secretariat could identify all communications based on that issue and the corresponding views of the Committee.

43. Mr. POCAR and Mr. LALLAH agreed that paragraph 13 should be retained and reformulated on the basis of the Committee's jurisprudence.

44. Mr. EL-SHAFEI said that paragraph 13 should remain, but needed revision.

45. Mr. DIMITRIJEVIĆ agreed that the text of paragraph 13 should be retained as a basis for discussion, subject to perusal of the Committee's jurisprudence. He pointed out, however, that its jurisprudence had never touched on the right of conscientious objection per se but rather on situations in which laws guaranteeing the right had been misapplied and the right had been violated.

46. Mrs. EVATT said that the issue itself of conscientious objection should be dealt with in paragraph 13.

47. Mr. DIMITRIJEVIĆ, summing up the general consensus, said, with regard to paragraph 11, that a way should be found to keep the relevant parts referring to a dominant or established state religion so as to deal with the issue of majority/minority religion. Further thought should be given to some treatment of state ideology in paragraph 12. With regard to paragraph 13, he asked members to suggest issues that they thought fell within its scope so that the Working Group on Article 40 of the Covenant could work further on the matter.

48. The CHAIRMAN said that the Committee had concluded its consideration of the draft comment on article 18 for the current session.

The meeting rose at 12.25 p.m.